# Trans-Summit Sdn Bhd v Chun Nyook Lin

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO M-02-131-94
SHAIK DAUD, SITI NORMA YAAKOB AND ABU MANSOR JJCA
7 JULY 1995

***Land Law*** *— Restraints on dealings — Caveats — Removal of caveat — Caveator's interest arising from alleged agreement to enter into joint venture agreement — Joint venture agreement not signed — Whether interest caveatable — Balance of convenience — National Land Code 1965 s 323(1)*

The issue that was raised in this appeal was whether the respondent had a caveatable interest that would entitle her to lodge a private caveat in a piece of property which has been purchased by the appellant. The caveat was lodged against Lot 1915, Mukim Durian Tunggal, Daerah Alor Gajah, Melaka ('the land'). The land was originally registered in the name of Kumpulan Realty Melaka Sdn Bhd, now under liquidation. Kumpulan Realty charged the land as security for a loan and when Kumpulan Realty defaulted, the chargee decided to sell the land. The chargee gave an option to purchase to a company known as Airport Auto Centre Sdn Bhd of which the respondent is a director. As Airport Auto had no funds to purchase the land, it assigned all its rights under the option to the appellant which subsequently purchased the land together with two other lots for RM1.1m to develop the land into a housing estate. The respondent contended that her company was supposed to enter into a joint venture agreement with the appellant for the project. However, the appellant refused to recognize and acknowledge Airport Auto as its partner in the housing project and the respondent lodged the caveat to protect her company's interest. The respondent also brought a civil suit against the appellant to enforce the joint venture agreement. The appellant applied to remove the caveat but its application was dismissed. The appellant has appealed.

**Held**, allowing the appeal:

(1) The respondent's interest in the land was purely monetary and this did not constitute a caveatable interest under s 323(1) of the National Land Code 1965. Therefore, the caveat could not be extended until after the disposal of the civil suit against the appellant.

(2) The facts of the case did not disclose a serious question to be tried. The balance of convenience tilted in favour of the appellant in giving him a free hand to continue developing the land with the two adjoining lots. The respondent's company can be adequately compensated by damages in the event that it succeeds in the civil suit.

[**Bahasa Malaysia summary**

Isu yang dibangkitkan di dalam rayuan ini adalah sama ada pihak penentang mempunyai kepentingan yang boleh dikaveatkan yang membolehkannya memasukkan kaveat persendirian ke atas sebidang tanah yang telah dibeli oleh perayu. Kaveat itu dimasukkan ke atas Lot 1915, Mukim Durian Tunggal, Daerah Alor Gajah, Melaka ('tanah itu'). Tanah itu pada asalnya didaftarkan di bawah nama Kumpulan Realty Melaka Sdn Bhd, yang sekarang berada di bawah penyelesaian. Kumpulan Realty telah menggadai tanah itu sebagai cagaran untuk suatu pinjaman dan apabila Kumpulan Realty ingkar membayar hutangnya, pemegang gadaian bercadang untuk menjualkan tanah itu. Pemegang gadaian itu memberi opsyen belian kepada sebuah syarikat yang dikenali sebagai Airport Auto Repair Sdn Bhd untuk mana pihak penentang adalah salah seorang direktor. Oleh kerana Airport Auto tidak mempunyai wang yang mencukupi untuk membeli tanah itu, ia telah menyerahhak semua haknya di bawah opsyen itu kepada perayu yang kemudiannya telah membeli tanah itu bersama dengan dua lot lain pada harga RM1.1 juta dengan tujuan untuk membangunkan tanah itu sebagai taman perumahan. Pihak penentang menegaskan bahawa syarikatnya seharusnya mengikat suatu perjanjian usahasama dengan perayu untuk projek itu. Walau bagaimanapun, perayu enggan mengaku bahawa Airport Auto adalah pekongsinya di dalam projek perumahan itu dan pihak penentang telah memasukkan kaveat ke atas tanah itu untuk melindungi hak syarikatnya. Pihak penentang juga telah membawa suatu guaman sivil terhadap perayu untuk menguatkuasa perjanjian usahasama itu. Perayu memohon untuk membatalkan kaveat itu tetapi permohonannya telah ditolak. Perayu telah membuat rayuan.

**Diputuskan**, membenarkan rayuan itu:

(1) Kepentingan pihak penentang di dalam tanah itu hanyalah bersifat kewangan dan ini tidak dapat membentuk kepentingan yang boleh dikaveatkan di bawah s 323(1) Kanun Tanah Negara 1965. Maka, kaveat itu tidak dapat dilanjutkan sehingga selepas guaman sivil terhadap perayu diputuskan.

(2) Fakta kes ini tidak mendedahkan soalan yang serius untuk dibicarakan. Imbangan kemudahan memihak kepada perayu supaya beliau diberikan kebebasan sepenuhnya untuk membangunkan tanah itu bersama dengan dua lot yang bersempadanan dengannya itu. Syarikat pihak penentang boleh dipampas dengan ganti rugi sekiranya ia berjaya dalam guaman sivilnya itu.]

[*Editorial Note*: The respondent has filed for leave to appeal to the Federal Court vide Civil Application No 08–54–95.]

**Notes**

For cases on restraints on dealings, see 8 *Mallal's Digest* (4th Ed) paras 1687–1779; [1991] Mallal's Digest 1318–1328; [1992] Mallal's Digest 1187–1206; [1993] Mallal's Digest 970–980; [1994] Mallal's Digest 1621–1648.

**Cases referred to**

*J Raju v Kwong Yik Bank Bhd & Anor* [1994] 2 MLJ 408 (folld)
*Jit Kaur v Parl Singh* [1974] 2 MLJ 199 (refd)
*Million Group Credit Sdn Bhd v Lee Shoo Khoon & Ors* [1986] 1 MLJ 315 (refd)
*Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113 (refd)

**Legislation referred to**

National Land Code 1965 ss 323(1), 329(1)

**Appeal from**: Originating Summons No 24–8–94 (High Court, Melaka)

*Wong Kim Fatt* (*Gulam & Wong*) for the appellant.
*Hilary D'Cruz* (*SK Khoo, Tan Tian Tiok & Dato Ali Salleh*) for the respondent.

*Cur Adv Vult*

**Shaik Daud JCA**: I have had the opportunity of reading the draft judgment of my sister, Siti Norma Yaakob JCA, in this matter with which I concur.

**Siti Norma Yaakob JCA**: The only issue raised in this appeal is whether the respondent has a caveatable interest in a piece of property which has been purchased by the appellant, that entitles her to lodge a private caveat in the first place. In the court below, the trial judge held that she had, in proceedings commenced by the appellant to have the caveat removed, and it is to appeal against the dismissal of the appellant's application to have the private caveat removed that the present appeal is founded.

In applications of this nature, three conditions have to be fulfilled:

(1) whether the respondent has disclosed a caveatable interest under s 323(1) of the National Land Code 1965;

(2) whether the evidence discloses a serious question to be tried; and

(3) whether the balance of convenience lies in favour of the caveat continuing to remain on the register.

The caveat in these proceedings is lodged against Lot 1915 held under Grant No 3548, Mukim Durian Tunggal, Daerah Alor Gajah, Melaka.

The land was originally registered in the name of Kumpulan Realty Melaka Sdn Bhd, now under liquidation. Kumpulan Realty charged the land as security for a loan granted by Mayban Finance Bhd. When Kumpulan Realty defaulted, Mayban Finance as the chargee, decided to sell the land. This was achieved by Mayban Finance giving an option to purchase dated 4 September 1992, to a company known as Airport Auto Centre Sdn Bhd. The respondent is a director of Airport Auto.

As Airport Auto had no funds to purchase the land, it assigned all its rights under the option to the appellant by letter dated 5 October 1992. Mayban Finance had no objection to this arrangement and by a court order dated 30 November 1992, giving leave to the Official Receiver as the liquidator for Kumpulan Realty to sell the land, and a sale and purchase agreement dated 6 January 1993, executed by the Official Receiver as the liquidator for Kumpulan Realty (the vendor) with the appellant (the purchaser) and Mayban Finance (the chargee), the appellant purchased the land together with two other lots at the agreed price of RM1.1m.

The appellant has every intention to develop all the three lots into a housing estate and it is the respondent's contention that her company, Airport Auto, would enter into a joint venture agreement with the appellant for that project. As evidence of this, the respondent produced an unsigned joint venture agreement which the appellant refused to execute. It was following the appellant's conduct in refusing to acknowledge Airport Auto as a partner of the housing project that the respondent lodged the caveat on 7 July 1993, to protect her company's interests in the land. At the same time, Airport Auto filed Malacca High Court Civil Suit No 22–111–93 on 14 December 1993 against the appellant and Kumpulan Realty, praying for a number of reliefs, but as against the appellant, Airport Auto's principal reliefs are:

(1) for a declaration that between them there exists a valid and enforceable joint venture agreement over the land; and

(2) that the appellant execute the joint venture agreement.

It is the respondent's contention that although Airport Auto has no contractual obligations with the appellant over the land, nevertheless she claims that by virtue of Airport Auto's prayer for a declaratory decree in the civil suit, she has a caveatable interest over the land. For this she relies on the decision reached in the case of *J Raju v Kwong Yik Bank Bhd & Anor* [1994] 2 MLJ 408 at p 417, where the Supreme Court held that:

> ... a person who is entitled to initiate an action for a declaratory decree affecting his rights under the National Land Code is just as entitled as a person seeking specific performance or an injunction to enter a caveat pending the disposal of his suit.

By analogy, the respondent argues that her company's claim for a declaratory relief in the civil suit is sufficient to clothe her with the necessary interest entitling her to validly caveat the land in question. This we do not agree, as a thorough reading of *Raju*'s case shows that not all declaratory reliefs can empower a person like the respondent to lodge a caveat in order to

protect her interest. What the Supreme Court stated in *Raju*'s case is that only declaratory relief affecting rights under the National Land Code 1965 can justify a party entering a caveat to protect his interest. The Supreme Court had also affirmed an earlier decision reached in *Jit Kaur v Parl Singh* [1974] 2 MLJ 199 that held that a 'proposed action of a party to challenge the transfer of his land to another constituted sufficient ground for the entry of a private caveat'. See also the case of *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113 and *Million Group Credit Sdn Bhd v Lee Shoo Khoon & Ors* [1986] 1 MLJ 315.

In the proceedings before us, what interest does the respondent possess? It is not in the land. That has already been validly sold. Her interest really lies in the profits that her company hopes to gain from the joint venture agreement with the appellant, which is being challenged by the appellant. The civil suit testifies to this. As her interest is only monetary in nature, she has therefore no caveatable interest over the land. She cannot continue to have the private caveat lodged by her extended until after the disposal of the civil suit.

The facts of this case are such that we cannot find any issue serious enough to warrant a trial. On the contrary, what we see is that the appellant is restrained by the presence of the caveat from developing the land, which forms one of three continuous lots that have been purchased by the appellant for the sole purpose of developing all three lots together into a housing estate. On the facts of this case, we consider that the balance of convenience tilts in favour of the appellant being given a free hand to continue with the development of the land together with the adjoining two lots. If it later transpires that Airport Auto succeeds in the civil suit, then it will be adequately compensated with the damages that it claims in that suit but to rely on the declaratory decree that it seeks in that suit as the basis for the lodgment of the caveat is a wrong assessment of the whole situation and to that end, we cannot support the finding of the trial judge. On that conclusion, we allow this appeal with costs here and below and order that the deposit be refunded to the appellant. Consequentially, there will also be an order to assess damages by the Registrar of the High Court, Melaka, to be paid by the respondent to the appellant under s 329(1) of the National Land Code 1965. The private caveat Jilid 75 Folio 99 entered by the respondent against Lot 1915 is to be removed forthwith and the ex parte order for extension of the caveat is set aside.

**Abu Mansor JCA**: I have had the opportunity of reading the draft judgment of my sister, Siti Norma Yaakob JCA, in this matter with which I concur.

*Appeal allowed.*

Reported by Azra Azman